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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 449

KELLOGG COMPANY,
KELLOGG SALES COMPANY,
Petitioners,

vs.

THE UNITED STATES.

REPLY BRIEF FOR PETITIONERS.

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THE DARTNELL-BLEDSOE PRINTING COMPANY, CHICAGO

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Petitioners are impelled to file this reply brief because the brief in opposition filed by the United States erroneously contends that there is no issue warranting certiorari.

The brief in opposition (p. 8) states that the court below "properly defeated" the loophole in the statutory phrase imposing the tax only on "the amount paid within the United States." The important point is that it was not the function of the court below, or of any court, to plug a loophole in a tax statute, and thereby impose a tax by judicial construction. The separation of powers designed by the framers of the constitution designates the legislature as the taxing body—not the judiciary (U. S. Const., Art. I, Sec. 8, Cl. 1).

If Congress had sought to tax payments made *within* and *without* the United States when it enacted the prop-

erty transportation tax in 1942, it could have done so with ease. No difficulty was encountered in choosing appropriate language to amend the statute in 1950, and there is nothing obscure or abstruse about the word *within*.

The reference in the opposition brief (p. 8) to checks "payable to transportation companies within the United States" is without support in the record. The checks were delivered to transportation companies outside the United States at offices maintained by each of those companies in Canada.[1]

The adherance of this Court to the inviolability of the constitutional separation of powers is by now a matter of history (*Hepburn* v. *Griswold*, 8 Wall. 611, 19 L. Ed. 513). The decision of the court below contravenes this doctrine, deprives the petitioners of a substantial amount of money, and should not be treated as a matter of "no prospective significance" (Opp. Brief, p. 11).

Respectfully submitted,

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1. The Grand Trunk Western Railroad is wholly owned by the Canadian National Railway Company (*Moody's Transportation Manual*, 1955, p. 1309). The New York Central Railroad has substantial Canadian Interests, operates a main line serving Montreal and Quebec, and serves the provinces of Ontario and Quebec which have the bulk of the Dominion's population and manufacturing industries (*Moody's Transportation Manual*, 1955, pp. 954-956).